

IN THE CIRCUIT COURT OF GREENE COUNTY, MISSOURI

STATE OF MISSOURI ex rel.,)
JEREMIAH W. (JAY) NIXON,)
Attorney General of Missouri,)

AND THE MISSOURI DEPARTMENT)
OF NATURAL RESOURCES,)

Plaintiff,)

v.)

Case No. 120CC4166

RICHARD PECK, individually,)
2039 N. Pierce Avenue)
Springfield, MO 65803)

TERRY L. WILSON, individually,)
d/b/a **WILSON TIRE COMPANY,**)
1610 W. Mount Vernon)
Springfield, MO 65802)

Defendant.)

**PETITION FOR PRELIMINARY INJUNCTION, PERMANENT INJUNCTION,
COST RECOVERY, AND CIVIL PENALTIES**

COMES NOW, Plaintiff, the State of Missouri, at the relation of Jeremiah W. (Jay) Nixon, the Attorney General of Missouri, Shannon L. Whelan, Assistant Attorney General, and the Missouri Department of Natural Resources, and for its petition against Defendants Richard Peck and Terry L. Wilson ("Defendants"), states as follows:

ALLEGATIONS PERTAINING TO ALL COUNTS

1. Plaintiff, Jeremiah W. (Jay) Nixon, is the duly qualified, elected, and acting Attorney General of Missouri. The Attorney General is authorized to institute, in the name and on behalf of the state, civil proceedings at law or in equity necessary to protect

the rights and interests of the state under §27.060, RSMo. Plaintiff brings this action in the name of the people of Missouri. The Missouri Solid Waste Management Law authorizes the Attorney General's Office to bring this suit pursuant to §260.276.2, RSMo.

2. The Missouri Department of Natural Resources, ("the Department"), is a duly authorized state agency created under Section 640.010, RSMo, in part, to enforce the provisions of the Missouri Solid Waste Management Law, §§260.200 through 260.345, RSMo, (as amended), and the accompanying regulations.

3. At all times relevant herein, Terry L. Wilson has owned and controlled certain real property located at 1610 West Mount Vernon Street, Springfield, Missouri. This property is more specifically located in East ½ of Southeast 1/4 of Section 22, Township 29 North, Region 22 West, in Greene County, Missouri. This property shall be hereinafter referred to as "the site."

4. At all times relevant to the allegations of this suit, the site has been the location of Wilson Tire Company, an unincorporated entity, of which Mr. Wilson is the sole proprietor.

5. At all times relevant to the allegations of this lawsuit and based upon information and belief, Mr. Wilson has leased all or a portion of this property to Mr. Peck. Based upon information and belief, Mr. Peck has served as the operator or manager of Wilson Tire Company.

6. The acts of Defendants alleged herein occurred at the site in Greene County, Missouri and therefore venue is proper pursuant to §260.240, RSMo.

7. On or about April 5, 1993 and November 22, 1993, the Department inspected the site. During these inspections, the Department noted that over 500 waste tires were then on the site and that they were not being stored a minimum of twenty-five feet away from other buildings on the site in order to ensure fire protection. During this inspection, Mr. Peck refused to provide the Department with records in violation of 10 CSR 80-8.030(3)(A)2. The Department issued a Notice of Violation, (“NOV”), #0720 SW to Mr. Peck for failing to provide the Department with these records. A true and accurate copy of NOV #0720 SW and its cover letter are attached and incorporated as Exhibit A.

8. On or about April 21, 1994 and June 5, 1995, the Department again inspected the site. The Department noted that Mr. Peck was not keeping adequate records to comply with 10 CSR 80-8.030(3)(A)2 and was failing to store waste tires at least twenty-five feet away from any structure in violation of the fire protection requirements of 10 CSR 80-8.010(4)1. The Department once again informed Mr. Peck of the requirements of the Missouri Solid Waste Management Law with respect to the storage of waste tires.

9. On or about May 23, 1996, Mr. Peck entered into a work plan agreement with the Department to reduce the number of waste tires at the site. Peck agreed to

immediately begin removing 75 waste tires per week until the number of waste tires at the site was less than 499 waste tires. A true and accurate copy of this work plan agreement is attached and incorporated as Exhibit B.

10. On or about March 6, 1997, the Department issued NOV #2491 SW to Mr. Peck for maintaining a waste tire site without a permit in violation of §260.270.1(2), RSMo, and 10 CSR 80-8.040(4)(A). The Department noted that Peck had failed to comply with the terms of the work plan agreement and the number of waste tires at the site had increased instead of decreasing as was agreed upon in the work plan agreement. A true and accurate copy of NOV #2491 SW and its cover letter are attached and incorporated as Exhibit C.

11. On or about July 2, 1997, the Department conducted an inspection of the site. During the inspection, the Department noted that approximately 2000 waste tires were located at the site. The Department issued NOV #2568 SW to Mr. Peck for continuing to maintain a waste tire site without a permit in violation of §260.270.1(2), RSMo, and 10 CSR 80-8.040(4)(A). A true and accurate copy of NOV #2568 SW and its cover letter are attached and incorporated as Exhibit D.

12. On or about February 18, 2000, the Department conducted an inspection of the site. The Department noted that the tire storage requirements of 10 CSR 80-8.040(5) and the record keeping requirements of 10 CSR 80.8.040(6) were not being met. The Department ordered Mr. Peck to separate good or usable tires from waste tires as required

in 10 CSR 80-8.040(3)4 so that the Department could accurately determine how many regulated waste tires were located on the site. The Missouri Waste Tire Regulations exempt from regulation tires that are to be reused under 10 CSR 80-8.040(3)4. However, if the useable tires are not separated from the waste tires within thirty days of receipt, all of the tires are presumed to be waste tires and are regulated by the Department.

13. On or about June 22, 2000, the Department conducted an inspection of the site to determine if Mr. Peck had separated the usable tires from waste tires as ordered in the previous inspection and to determine the number of tires being stored at the site. The Department's inspection revealed that the tires had not been separated as required. The Department estimated that approximately 4,399 mixed car/truck tires, 3,157 truck tires, and 355 over-the-road tires were being stored at the site at this time, for a total of 7,911 waste tires. The Department issued NOV #4586 SW to Mr. Peck based on violations it noted at the site. A true and accurate copy of NOV #4586 SW and its cover letter are attached and incorporated as Exhibit E. These violations included:

- a. Operating a waste tire site without a permit in violation of §260.270.1(2), RSMo, and 10 CSR 80-8.040(4)(A);
- b. Failure to maintain a minimum distance from adjoining property and failure to have a public or private fire main on site as required in the National Fire Protection Association (NFPA) standards, NFPA 231D, which are incorporated into the Missouri Waste Tire Regulations at 10 CSR 80-8.040(5)(A)1;

c. Failure to properly divert storm water runoff around and away from the waste tire site in violation of 10 CSR 80-8.040(5)(B);

d. Failure to maintain vector control at the site in violation of 10 CSR 80-8.040(5)(E).

e. Failure to meet the record keeping requirements of a waste tire site in violation of 10 CSR 80-8.040(6).

14. On or about February 15, 2001, the Department conducted a re-inspection of the site. The Department observed that good or useable tires had still not been separated from waste tires and that the previous violations of the Missouri Solid Waste Management Law and Regulations noted in NOV #4586 SW had not been eliminated. The Department issued NOV #4810 SW to Mr. Peck. A true and accurate copy of NOV #4810 SW and its cover letter are attached and incorporated as Exhibit F.

15. On or about February 28, 2001, the Department sent a letter to defendant Terry Wilson informing him that as the property owner, he is jointly liable for compliance with the Missouri Solid Waste Management Law and the Waste Tire Regulations. The letter outlined the violations of §260.270.1(2), RSMo, and 10 CSR 80-8.040 specifically and asked Mr. Wilson to submit a written plan to achieve compliance at the site by March 12, 2001. A true and accurate copy of the letter is attached and incorporated as Exhibit G.

16. On or about March 12, 2001, Mr. Peck sent a letter to the Department stating that all tires stored outside at the site would be removed from the site by January 1, 2002, or placed in indoor storage. A true and accurate copy of the letter is attached and incorporated as Exhibit H. On or about March 15, 2001, the Department responded and stated that the nine month time frame proposed by Peck was not acceptable to the Department.

17. On or about April 16, 2001, the Department issued NOV # 5145 SW to Mr. Wilson for maintaining a waste tire site without a permit and continued failure to comply with fire protection requirements, vector controls, and record-keeping requirements at the site. A true and accurate copy of NOV #5145 SW and its cover letter are attached and incorporated as Exhibit I.

18. On or about May 7, 2001, Mr. Wilson met with the Department at his request to explain the continued deficiencies at the site. Mr. Wilson stated that he or Mr. Peck would submit a revised plan to bring the site into compliance by May 11, 2001.

19. On or about May 22, 2001, the Department issued NOV #4800 SW to Mr. Peck for operating a waste tire site without a permit in violation of §260.260.1(2), RSMo. The cover letter accompanying the NOV stated that Defendants had failed to submit a revised plan to the Department which was acceptable to the Department in order to remove the waste tires from the site or obtain a permit for operating a waste tire site. The letter requested that Mr. Peck submit a written plan for compliance within five days of

receipt of the letter. A true and accurate copy of NOV #4800 SW and its cover letter are attached and incorporated as Exhibit J.

20. On or about June 26, 2001, the Department sent a penalty demand letter to Mr. Peck. The letter outlined Mr. Peck's violations of the Missouri Solid Waste Law and Regulations and listed all nine NOV's regarding the site that had been issued to date. The letter offered Mr. Peck the opportunity to meet with and resolve the outstanding violations with the Department. A true and accurate copy of this letter is attached and incorporated as Exhibit K.

21. On or about July 19, 2001, Mr. Peck and the Department met to discuss a resolution of the violations. During this meeting, Mr. Peck verbally agreed to remedy the violations of the Missouri Solid Waste Management Law within sixty days and to enter into a compliance agreement with the Department.

22. On or about February 4, 2002, the Department conducted an inspection of the site to determine if the site had been brought into compliance. The Department noted that the site continued to be in noncompliance. Based on the continued violations noted by the Department at this inspection, the Department issued Mr. Peck NOV #5873 SW on March 21, 2002. A true and accurate copy of NOV #5873 SW and its cover letter are attached hereto and incorporated as Exhibit L.

23. The Department has attempted to resolve Defendants' violations of the Missouri Solid Waste Management Law, but Defendants have failed and refused to commit to remedying the violations at the site.

24. A "waste tire site" is defined in §260.200(49), RSMo, and 10 CSR 80.8.040(1)(D) as "a site at which five hundred (500) or more waste tires are accumulated...". Defendants have caused or allowed five hundred (500) or more waste tires to be accumulated on the site. The Department estimates currently that over 30,000 waste tires are located at the site.

25. Section 260.270.1(2), RSMo, and 10 CSR 80-8.040 require that a permit be acquired from the Department for the legal operation of a waste tire site. Defendants have never obtained a waste tire site permit from the Department and have therefore continuously maintained a waste tire site without a permit.

26. Defendants' unpermitted waste tire site is a fire hazard. The Waste Tire Regulations require tires to be stored in accordance with the National Fire Protection Association Standards, which are incorporated into the Waste Tire Regulations at 10 CSR 80-8.040(5)(A)1. The unpermitted waste tire site contains tires stored in too close proximity to other structures and does not contain adequate fire lanes to ensure access to the site if needed. Defendants also have never maintained a water source at the site such as a private fire hydrant to ensure adequate precautions in the case of a tire fire. Smoke,

fumes, and particulates from a potential tire fire at the site would be hazardous to public health, safety, and welfare.

27. Defendants have failed to maintain adequate vector control at the site, therefore increasing the breeding, feeding, or harboring of vectors at the site in violation of 10 CSR 80-8.040(E). Increased vectors such as mosquitoes are potential sources for transmitting diseases in humans and are a threat to public health, safety and welfare.

28. Defendants have not provided the Department with adequate records concerning the site and therefore has failed to comply with the record keeping requirements of 10 CSR 80-8.040(6) for a waste tire site.

29. The site is located in a floodplain in violation of 10 CSR 80-8.040(5)(C) and therefore poses a risk of flood waters reaching the tires.

30. On or about September 15, 1992, the Department issued a waste tire hauler permit, (“hauling permit”), to Mr. Peck a copy of which is attached hereto and incorporated herein as Exhibit M. The aforesaid permit did not authorize the creation or maintenance of a waste tire storage or disposal site.

31. Mr. Peck applied for renewal of the hauling permit and Department renewed the hauling permit on a yearly basis as required by law through July 30, 1997.

32. On or about July 30, 1997, the Department sent Mr. Peck a letter informing him that his application for a renewal waste tire hauler permit was denied due to ongoing violations of the Missouri Solid Waste Management Law and Regulations outlined above.

Specifically, the letter noted that Mr. Peck had not complied with the work plan agreement entered into with the Department on May 23, 1999, and the continued in violation by maintaining a waste tire site without a permit. A true and accurate copy of this letter is attached and incorporated as Exhibit N.

33. Mr. Peck has not held a valid waste tire hauler permit since July 30, 1997.

34. On or about January 8, 1998, the Department issued NOV #2958 SW to Mr. Peck for transporting waste tires without a permit in violation of §260.270.1(1), RSMo. NOV #2958 SW specifically noted that the Department had learned that Mr. Peck had transported waste tires in violation of the law on both December 6, 1997 and December 19, 1997. A true and accurate copy of NOV #2958 SW and its cover letter are attached and incorporated as Exhibit O.

35. On or about January 29, 1998, Mr. Peck met with representatives from the Department regarding the denial of Mr. Peck's waste tire hauler permit. Mr. Peck stated at this time that he would continue to haul waste tires in violation of §260.270.1(1), RSMo, even though he was aware that his waste hauler permit had been revoked.

36. Section 260.270.1(1) makes it illegal for "any person to haul for commercial profit, collect, process, or dispose of waste tires," without a waste tire hauler permit. The requirements for obtaining a waste tire hauler permit are set out in 10 CSR 80-8.030.

COUNT I: INJUNCTIVE RELIEF AND CIVIL PENALTY
PURSUANT TO §260.240.1, RSMo, FOR MAINTAINING A WASTE TIRE SITE
WITHOUT A PERMIT IN VIOLATION OF §260.270.1(2), RSMo

37. Plaintiff realleges and incorporates by reference each and every allegation contained in paragraphs 1-36.

38. The site constitutes an unpermitted “solid waste disposal area” as the term is defined §260.200(35), RSMo, and also an unpermitted “waste tire site” as that term defined in §260.200(49), RSMo.

39. Defendants’ actions including disposing of or storing waste tires at the site or authorizing and permitting others to do so constitute the unlawful storage, collection, processing, or disposal of solid waste within the meaning of §260.210.1, RSMo.

40. Pursuant to §260.240.1, RSMo, Defendants are subject to the imposition of a civil penalty not to exceed \$1,000.00 per day per violation, or part thereof, that they have illegally disposed of or stored waste tires on the site; or allowed others to do so; or otherwise violated the provisions of the Missouri Solid Waste Management Law, §§260.200 to 260.245, RSMo.

41. Defendants have disposed of or stored waste tires, or allowed others to do so, for more than 730 days immediately preceding the filing of this petition.

42. The unlawful acts of Defendants are of such a continuous nature, and are in such conscious disregard for public health and the protection of soil and water resources

of the State of Missouri, the Plaintiff believes the Missouri Solid Waste Management Law will continue to be violated by Defendants unless they are restrained by the Court.

43. Pursuant to §260.240.1, RSMo, Defendants are subject to an injunction compelling them to remove the waste tires disposed of or stored at the site and to cease bringing waste tires to the site.

WHEREFORE, Plaintiff prays for this Court's order that:

A. Issues a preliminary and permanent injunction compelling Defendants to promptly remove and properly dispose of the waste tires stored on the site at a legal destination; to cease bringing waste tires to the site; and to comply with the waste tire site storage requirements of 10 CSR 80-8.040(5) until all waste tires have been removed from the site;

B. Imposes against Defendants an appropriate civil penalty not to exceed \$1,000.00 per day, or part thereof, that he has disposed of or stored waste tires on the site, or allowed others to do so, or otherwise violated the provisions of §§260.200 to 260.245, RSMo; and

C. Grants such further relief as this Court deems just and proper.

COUNT II: INJUNCTIVE RELIEF AND CIVIL PENALTY
PURSUANT TO §260.240.1 FOR HAULING WASTE TIRES WITHOUT A
WASTE TIRE HAULING PERMIT IN VIOLATION OF §260.270.1(1)

44. Plaintiff realleges and incorporates by reference each and every allegation contained in paragraphs 1-43.

45. Section 260.270.1(1) requires a waste tire hauler permit to be obtained from the Department in order for any person to legally haul waste tires in the State of Missouri. The requirements for obtaining a waste tire hauler permit are set out in 10 CSR 80-8.030.

46. Mr. Peck's actions including hauling waste tires for commercial profit without a waste tire hauling permit since July 30, 1997 constitutes the illegal transporting, collecting, or disposing of a solid waste in violation of §260.210.1(1).

47. Pursuant to §260.240.1, RSMo, Mr. Peck is subject to the imposition of a civil penalty not to exceed \$1,000.00 per day per violation, or part thereof, that Defendant Peck has illegally hauled waste tires for commercial profit without a permit or otherwise violated the provisions of the Missouri Solid Waste Management Law, §§260.200 to 260.245, RSMo.

48. Mr. Peck has hauled waste tires for commercial profit without a permit for more than 730 days immediately preceding the filing of this petition.

49. The unlawful acts of Mr. Peck are of such a continuous nature, and are in such conscious disregard for public health and the protection of soil and water resources of the State of Missouri, the Plaintiff believes the Missouri Solid Waste Management Law will continue to be violated by Mr. Peck unless he is restrained by the Court.

50. Pursuant to §260.240.1, RSMo, Mr. Peck is subject to an injunction compelling him to cease bringing waste tires to the site and bring the site into compliance with the Missouri Solid Waste Management Law and regulations.

WHEREFORE, Plaintiff prays for this Court's order that:

A. Issues a preliminary and permanent injunction compelling Mr. Peck to promptly cease hauling waste tires; remove and properly dispose of the waste tires stored on the site at a legal destination; and to comply with the waste tire site storage requirements of 10 CSR 80-8.040(5) until all waste tires have been removed from the site;

B. Imposes against Defendants an appropriate civil penalty not to exceed \$1,000.00 per day, or part thereof, that he has hauled waste tires for commercial profit without a permit, or otherwise violated the provisions of §§260.200 to 260.245, RSMo; and

C. Grants such further relief as this Court deems just and proper.

**COUNT III: NUISANCE ABATEMENT ACTIVITIES AND
COST RECOVERY UNDER §260.276**

51. Plaintiff realleges and incorporates by reference each and every allegation contained in paragraphs 1-50.

52. Section 260.276, RSMo, provides the following, in pertinent part:

1. The department of natural resources shall, subject to appropriation, conduct resource recovery or nuisance abatement activities designed to reduce the volume of waste tires or alleviate any nuisance condition at any site if the owner or operator of such a site fails to comply with the rules and regulations authorized under section 260.270, or if the site is in continued violation of such rules and regulations....

2. The department may ask the attorney general to initiate a civil action to recover from any persons responsible for reasonable and necessary costs incurred by the department for its nuisance abatement activities and its legal expenses related to the abatement;...

53. For the Department and its third-party contractors to conduct nuisance abatement activities, they must be granted a right of access and entry to the site.

54. Because Defendants created or allowed to be created the nuisance at the site, they are also responsible for the reasonable and necessary costs incurred by the Department for its nuisance abatement activities and its legal expenses related to the abatement.

55. The Plaintiff has no adequate remedy at law.

WHEREFORE, Plaintiff prays for this Court's order that:

A. Issues a preliminary and permanent injunction compelling Defendants to promptly remove and properly dispose of the waste tires stored on the site at a legal destination; to cease bringing waste tires to the site; and to comply with the waste tire site storage requirements of 10 CSR 80-8.040(5) until all waste tires have been removed from the site; all nuisance conditions are abated and, in the event Defendants fail to comply with the provisions of §260.270 and clean up the site -

B. Grants the Department and its third-party contractors a right of entry and access to the site, including the right to bring and store thereon such equipment and vehicles as are reasonable and necessary to complete nuisance abatement activities;

C. Authorizes the Department to conduct nuisance abatement activities to eliminate tires stored at the unpermitted waste tire site;

D. Prohibits Defendants from interfering with the Department or any of its third-party contractors in the performance of nuisance abatement activities;

E. Provides that the right of access and entry, as well as the right to commence and complete nuisance abatement activities, run with the land and bind Defendants' successors and assigns, if any;

F. Finds that Defendants are responsible for creating or allowing to be created the nuisance condition and therefore Plaintiff is entitled to recover from Defendants its reasonable and necessary costs incurred for its nuisance abatement activities and its legal expenses related to the abatement; and

G. Grants such further relief as this Court deems just and proper.

Respectfully submitted,

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